United States Department of Labor
Employees' Compensation Appeals Board

L.F., Appellant	)	
and	)	**Docket No. 17-0689**
	)	**Issued: May 9, 2018**
DEPARTMENT OF VETERANS AFFAIRS, HAMPTON VETERANS ADMINISTRATION MEDICAL CENTER, Hampton, VA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 6, 2017 appellant filed a timely appeal from a November 8, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish an injury in the performance of duty on July 14, 2016, as alleged.

FACTUAL HISTORY

On July 18, 2016 appellant, then a 46-year-old nursing assistant, filed a traumatic injury claim (Form CA-1) alleging that she sustained a low back injury on July 14, 2016 while moving a

[1] 5 U.S.C. § 8101 *et seq.*

patient from a stretcher to a wheelchair and lifting the lower part of the patient's body to place pillows under him. She stopped work that same day. On the reverse side of the claim form, appellant's immediate supervisor checked a box marked "Yes" to indicate that the claimed July 14, 2016 injury occurred in the performance of duty.

On July 15, 2016 appellant sought treatment for her claimed injury at an emergency room. In a July 15, 2016 report, Xinde Song, an attending physician assistant, indicated that appellant reported that she developed acute low back pain while lifting a patient at work on July 14, 2016. Appellant also reported that she had experienced chronic low back pain for eight years prior to the claimed July 14, 2016 incident. Mr. Song indicated that physical examination revealed no focal weakness from a neurological standpoint and he noted that appellant was disabled from work.

In a July 18, 2016 duty status report (Form CA-17), an attending family nurse practitioner with an illegible signature noted that appellant reported experiencing lumbar pain after repositioning a patient on July 14, 2016. The nurse practitioner diagnosed lumbar strain and indicated that appellant could resume work on July 25, 2016.

OWCP received the findings of a July 26, 2016 magnetic resonance imaging (MRI) scan, which showed multilevel degeneration between L2-3 and L5-S1 causing various degrees of spinal canal and neuroforaminal narrowing.

In early-August 2016 appellant sought treatment for her back problems from Dr. John W. Aldridge, a Board-certified orthopedic surgeon. In an August 2, 2016 report entitled "History and Physical," Dr. Aldridge indicated that appellant complained of low back pain which developed acutely after pulling on a patient at work on July 14, 2016. He discussed the findings of his August 2, 2016 physical examination noting that appellant exhibited lumbar spine muscle spasms and moderate pain upon mildly reduced range of motion of the lumbar spine. Straight leg test was negative and sensation/strength testing of the lower extremities yielded normal results. Dr. Aldridge diagnosed degenerative lumbar disc disease and recommended that appellant engage in physical therapy and a home exercise program.[2]

In an August 2, 2016 note entitled "Orders Note," Dr. Aldridge indicated that appellant could return to work as of August 2, 2016 with various work restrictions including lifting no more than 30 pounds, standing for no more than 2½ hours per day, walking for no more than 2½ hours per day, and no engaging in climbing, crawling, kneeling, or squatting.[3]

In an authorization form for examination and/or treatment (Form CA-16) completed on August 4, 2016, Dr. Aldridge listed the history of the claimed July 14, 2016 injury as "pain began after pulling on a patient" and indicated that appellant had the preexisting condition of degenerative

[2] Dr. Aldridge produced an August 2, 2016 note detailing the nature of the recommended physical therapy and the record contains numerous reports from Marc Forrest, William Powers, Robert Williams and Chad Carlson, appellant's attending physical therapists.

[3] This note listed the date of injury as July 14, 2016 and contained a diagnosis of lumbar spine pain. Dr. Aldridge also produced an August 2, 2016 work capacity evaluation form (Form OWCP-5c) which contained a diagnosis of lumbar spine pain and delineated similar work restrictions. On August 2, 2016 appellant returned to limited-duty work for the employing establishment.

disc disease at multiple levels. He indicated "see attached" in the portion of the form for listing his findings and diagnoses, and he provided copies of the above-described August 2, 2016 report and August 2, 2016 note. Dr. Aldridge checked a box marked "Yes" to indicate that the medical condition found was caused or aggravated by the described employment incident. He found that appellant was partially disabled from August 2 to September 2, 2016 and indicated "see attached" in the portion of the form for listing work restrictions. Dr. Aldridge recommended that appellant participate in physical therapy sessions on a periodic basis.

In a September 2, 2016 progress report, Dr. Aldridge again diagnosed degenerative lumbar disc disease. He provided a history of the claimed July 14, 2016 injury and physical examination findings from September 2, 2016 which were similar to those contained in his August 2, 2016 report entitled, "History and Physical." In a September 2, 2106 note, Dr. Aldridge noted that appellant could return to work on September 2, 2016 and he provided work restrictions similar to those contained in his August 2, 2016 note entitled "Orders Note."

In September 30, 2016 development letter, OWCP requested that appellant submit additional evidence in support of her claim, including a physician's opinion supported by a medical explanation as to how the claimed July 14, 2016 employment incident caused or aggravated a medical condition. It requested that appellant complete and return an attached questionnaire which posed various questions regarding the claimed July 14, 2016 employment incident. On September 30, 2016 OWCP also requested additional information from the employing establishment. It provided appellant and the employing establishment 30 days to respond.[4]

Appellant submitted October 4 and November 4, 2016 progress reports in which Dr. Aldridge again diagnosed degenerative lumbar disc disease. In these reports, Dr. Aldridge provided a history of the claimed July 14, 2016 injury and physical examination findings from October 4 and November 4, 2016 which were similar to those contained in his prior reports. In October 4 and November 4, 2016 notes, Dr. Aldridge provided work restrictions which were similar to those he previously provided.[5]

Appellant also resubmitted copies of the July 26, 2016 MRI scan and the August 2 and September 2, 2016 reports of Dr. Aldridge.

By November 8, 2016 decision, OWCP denied appellant's claim for a July 14, 2016 employment injury, finding that she failed to establish the occurrence of an employment incident on July 14, 2016 as alleged.[6] OWCP further indicated that appellant failed to submit medical

[4] The employing establishment did provide any response to OWCP's request in the allotted time period. Although appellant submitted new medical evidence and administrative documents, she did not complete and return the factual questionnaire within the allotted time period.

[5] Appellant also submitted several administrative documents and notes from October 2016 in which Dr. Aldridge ordered steroid injections.

[6] OWCP indicated that appellant had not completed and returned the factual questionnaire sent to her on September 30, 2016 and noted that therefore the "factual portion of your claim remains unclear."

evidence sufficient to establish a diagnosed medical condition causally related to the claimed employment incident/injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA[7] has the burden of proof to establish the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[8] These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[9]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.[10]

An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. An employee has not met his or her burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established. However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.

The employee must also submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[11]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the

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[7] *See supra* note 1.

[8] *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[9] *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989). A traumatic injury refers to injury caused by a specific event or incident or series of incidents occurring within a single workday or work shift whereas an occupational disease refers to an injury produced by employment factors which occur or are present over a period longer than a single workday or work shift. 20 C.F.R. § 10.5 (q), (ee); *Brady L. Fowler*, 44 ECAB 343, 351 (1992).

[10] *Julie B. Hawkins*, 38 ECAB 393 (1987).

[11] *John J. Carlone*, 41 ECAB 354 (1989).

physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[12]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an injury due to a July 14, 2016 employment incident.

Appellant claimed that she sustained a low back injury on July 14, 2016 while moving a patient from a stretcher to a wheelchair and lifting the lower part of the patient's body to place pillows under him. She stopped work on July 14, 2016 and returned to limited-duty work on August 2, 2016. In a November 8, 2016 decision, OWCP denied appellant's claim for a July 14, 2016 employment injury because she failed to establish the factual aspect of the fact of injury. It found that she did not establish the occurrence of an employment incident on July 14, 2016.

As noted above, to establish the fact of injury the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.[13] The Board finds that appellant has established that an employment incident occurred on July 14, 2016 in the form of moving a patient from a stretcher to a wheelchair and lifting the lower part of the patient's body to place pillows under him. Appellant reported the date and mechanism of the claimed July 14, 2016 injury in a consistent manner to OWCP and medical practitioners. She reported the claimed July 14, 2016 employment injury and stopped work on that same date. Appellant sought medical care for her claimed condition on July 15, 2016. The Board finds that there are no inconsistencies in the evidence which would cast serious doubt upon the validity of appellant's claim and her account of the July 14, 2016 incident at work is not refuted by strong or persuasive evidence.[14]

The Board further finds that, although appellant has established a July 14, 2016 employment incident, she has not submitted rationalized medical evidence sufficient to establish a diagnosed medical condition causally related to the July 14, 2016 employment incident.[15]

Appellant submitted an August 4, 2016 Form CA-16 from Dr. Aldridge who listed the history of the July 14, 2016 injury as "pain began after pulling on a patient" and indicated that appellant had the preexisting condition of degenerative disc disease at multiple levels. In the portion of the form for listing his findings and diagnoses, Dr. Aldridge indicated that reference should be made to attached documents, and he submitted an August 2, 2016 report which detailed

[12] *See I.J.*, 59 ECAB 408 (2008); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

[13] *See supra* note 10.

[14] *See supra* notes 15 through 17.

[15] *D.R.*, Docket No. 16-0528 (issued August 24, 2016) (finding that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining the relationship between a given employment incident/activity and a diagnosed medical condition).

the findings of an August 2, 2016 physical examination and contained a diagnosis of degenerative lumbar disc disease.[16] He checked a box marked "Yes" to indicate that the medical condition found was caused or aggravated by the described employment incident and he found that appellant was partially disabled from August 2 to September 2, 2016.

The Board has held that when a physician's opinion on causal relationship consists only of checking "Yes" to a form question, without more by the way of medical rationale, that opinion has little probative value and is insufficient to establish causal relationship. Appellant's burden of proof includes the necessity of furnishing an affirmative opinion from a physician who supports her conclusion with sound medical reasoning.[17] As Dr. Aldridge did no more than check "Yes" to a form question on the August 4, 2016 Form CA-16, his opinion on causal relationship is of little probative value and is insufficient to discharge appellant's burden of proof. He did not describe the July 14, 2016 employment incident in any detail or provide a discussion, supported by objective findings, explaining how it would have been competent to cause or contribute to the diagnosed medical condition. The provision of such explanation is especially necessary in the present case because appellant had reported that she had experienced nonwork-related chronic low back pain for eight years prior to the July 14, 2016 employment incident.[18]

The Board further finds that the August 2, 2016 report and August 2, 2016 note that Dr. Aldridge attached to his August 4, 2016 Form CA-16 do not establish appellant's claim for a July 14, 2016 employment injury because the reports do not contain any opinion on the cause of the diagnosed low back conditions. The Board has held that medical evidence which does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship and therefore the submission of these reports does not establish appellant's claim for a July 14, 2016 employment injury.[19]

Appellant also submitted numerous medical reports describing the periodic treatment she received for her back condition. For example, in September 2, October 4, and November 4, 2016 progress reports, Dr. Aldridge again diagnosed degenerative lumbar disc disease. In these reports, he provided a history of the claimed July 14, 2016 injury and physical examination findings from September 2, October 4, and November 4, 2016 which were similar to those contained in his August 2, 2016 report. In September 2, October 4, and November 4, 2016 notes, Dr. Aldridge provided work restrictions which were similar to those he previously provided.

Although these reports mention the July 14, 2016 employment incident and contain a diagnosis for a low back condition, none of these reports contains a clear opinion relating a diagnosed

[16] Dr. Aldridge also attached an August 2, 2016 note which delineated work restrictions and contained a diagnosis of lumbar spine pain.

[17] *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

[18] The Board notes that where an employing establishment properly executes a Form CA-16 authorizing medical treatment related to a claim for a work injury, the form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination/treatment regardless of the action taken on the claim. *See Tracy P. Spillane*, 54 ECAB 608 (2003). The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. *See* 20 C.F.R. § 10.300(c).

[19] *See Charles H. Tomaszewski*, 39 ECAB 461 (1988).

condition to the July 14, 2016 employment incident. As noted above, medical evidence which does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[20] Therefore, the submission of these reports does not establish appellant's claim for a July 14, 2016 employment injury.[21]

For these reasons, appellant has not met her burden of proof to establish an injury due to a July 14, 2016 employment incident.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has established that the July 14, 2016 employment incident occurred as alleged. However, appellant has not established a medical condition causally related to the accepted July 14, 2016 employment incident.

[20] *See supra* note 19.

[21] The record also contains reports of a physician assistant, nurse practitioner, and several physical therapists. However, these reports do not constitute probative medical evidence because these health care providers are not considered physicians within the meaning of FECA. *See* 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t); *M.C.*, Docket No. 16-1238 (issued January 26, 2017); *R.S.*, Docket No. 16-1303 (issued December 2, 2016); *L.L.*, Docket No. 13-0829 (issued August 20, 2013).

ORDER

IT IS HEREBY ORDERED THAT the November 8, 2016 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: May 9, 2018
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board